A RESOLUTION urging the American Law Institute to materially change the proposed Restatement of the Law of Liability Insurance.

WHEREAS, the American Law Institute (ALI) is a private nonprofit organization that drafts, among other things, Restatements addressed to courts; and

WHEREAS, ALI intends to publish a Restatement of the Law of Liability Insurance (hereinafter "proposed Restatement"); and

WHEREAS, ALI Restatements have traditionally been held in high regard and relied upon by courts as authoritative references regarding established rules and principles of law; and

WHEREAS, according to the 2015 ALI Style Guide, these Restatements are "primarily addressed to courts" and "aim at clear formulations of common law and its statutory elements of variations and reflect the law as it presently stands or might appropriately be stated by a court;" and

WHEREAS, the National Council of Insurance Legislators (NCOIL) is a legislative organization comprised principally of legislators serving on state insurance and financial institutions committees; and

WHEREAS, NCOIL has identified several areas of the proposed Restatement that, contrary to ALI's stated intent, are inconsistent with well-established law and purport to address matters which are properly within the legislative prerogative; and

WHEREAS, NCOIL, through its Chief Executive Officer, Thomas B. Considine, addressed a letter dated May 4, 2017, to ALI leadership identifying particular concerns and requested reconsideration of and significant changes to the proposed Restatement; and

WHEREAS, after receipt of the letter from Mr. Considine, ALI deferred a final vote on the proposed Restatement until 2018, with the recognition that the proposed Restatement would benefit from another year of work; and

WHEREAS, the subsequent drafts of the proposed Restatement reflect only very
minor changes to the insurance legal rules proposed and contain no substantive changes in the rules proposed on the topics of particular concern identified in the letter from NCOIL; and

WHEREAS, during its General Session on November 16, 2017, NCOIL hosted a panel presentation which included the proposed Restatement's lead Reporter, and it was apparent from the Reporter's commentary that no or minimal substantive changes to the proposed Restatement are anticipated before it is submitted to the ALI Council and then the ALI membership for final approval;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. This honorable body respectfully urges ALI leadership, members, and Reporters to abide by ALI's own acknowledgement that "[a]n unelected body like The American Law Institute has limited competence and no special authority to make major innovations in matters of public policy," and instead afford proper respect to the legislative prerogative, and the expertise and the jurisdiction of NCOIL members.

Section 2. This honorable body respectfully urges ALI to effect meaningful change to the proposed Restatement so that it is consistent with well-established insurance law and respectful of the role of state legislatures in establishing insurance legal standards and practice.

Section 3. This honorable body respectfully urges that, if meaningful change to the proposed Restatement does not occur prior to its final approval, the Restatement of the Law of Liability Insurance should not be afforded recognition by courts as an authoritative reference regarding established rules and principles of insurance law, as Restatements have traditionally been afforded.

Section 4. The Clerk of the House of Representatives is directed to send a copy of this Resolution to Richard L. Revesz, Director, The American Law Institute, 4025
1 Chestnut Street, Philadelphia, Pennsylvania 19104; John D. Minton Jr., Chief Justice, Kentucky Supreme Court, State Capitol, Room 231, Frankfort, Kentucky 40601; and Nancy G. Atkins, Commissioner, Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.